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1	BEFORE THE POLLUTION CONTROL HEARINGS BOARD	
2	STATE OF WASHINGTON	
3	IN THE MATTER OF) PAUL OLSEN,)	
4) Appellant,) PCHB No. 78-58	
5) y.) FINAL FINDINGS OF FAC'	т,
6	STATE OF WASHINGTON,) CONCLUSIONS OF LAW AND ORDER	
7	DEPARTMENT OF ECOLOGY,)	
3	Respondent.)	
9		

Appellant appeals from the Department of Ecology denial of his application for a permit to withdraw ground water. The matter came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, on September 29, 1978 in Ellensburg, Washington. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Paul Olsen appeared pro se. Respondent Department of
Ecology appeared by and through its attorney, Robert E. Mack, Assistant
Attorney General. Yakima reporter Susan Oynes recorded the proceedings.

WAH/DO

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Witnesses were sworn and testified. Exhibits were examined.

Having heard the testimony and examined the exhibits, and being fully advised, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

J

Appellant, Paul Olsen, owns farm land near Buena in Yakima County (in Section 16, T. 11 N., R. 20 E.W.M.; see Exhibit R-3). The Sunnyside Valley Irrigation District (SVID) diverts water from the Yakima River into an irrigation canal which runs along the northeast boundary of this property. Highway 12 forms the southwest boundary of the farm, about 3/4 mile north from the Yakima River.

Mr. Olsen now irrigates his farm exclusively with water from the SVID canal. In February, 1977, he applied to respondent (DOE) for a permit to withdraw ground water as a supplementary source for irrigation, and to permit development of additional orchards. The proposed point of withdrawal was within a low-lying portion of the farm, adjacent to the highway.

ΙI

Mr. Olsen's application was accepted by DOE for processing and, in April, 1977, a DOE employee conducted a field examination of the proposed site. Both the application and field examination should have put DOE on notice that the well being sought would be very shallow, would be in close proximity to the Yakima River and would possibly be in direct hydraulic continuity with the river. DOE should have notified Mr. Olsen that, by a general (unwritten) policy developed in the 1940s, the DOE will deny any application for such shallow wells

because of the full appropriation of the Yakıma River for irrigation.

Nevertheless Mr. Olsen, with the knowledge of DOE, directed the digging of the well in May, 1977. The well was dug to a depth of 13-1/2 feet, and the material removed consisted of sand, gravel and loose rock, identified by DOE as river deposit material. The water table was, and is, 30 inches below surface at the well site. Mr. Olsen made no withdrawal from the well for irrigation pending DOE's decision on his application.

In February, 1978, nearly a year after the well was dug, the DOE ordered denial of the Olsen application.

III

The DOE determined, and we find as fact, that waters of the Yakıra River infiltrate the sand and gravel alongside the river and flow east and southeast (downhill) to the instant site, where the static water level is approximately six feet below that of the river. Waters in Mr. Olsen's subject well are therefore in hydraulic continuity with the Yakıra River. North and east of the point of withdrawal, seepage from the unlined canal and return flow from irrigated lands on a plateau above the subject property migrate, through the ground, toward the river. Neither these facts nor the long standing DOE policy of denying applications for such irrigation wells were made clear to Mr. Olsen until the hearing before this Board in this appeal.

ΙV

Although not stated in his ground water application, Mr. Olsen seeks to use water from the well for frost prevention as well as irrigation. This use, when "surplus" water is available, may not impair

27 | FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

existing withdrawals from the Yakıma River if conditioned to halt at the beginning of the irrigation season.

Also, ground water for irrigation which is not in continuity with the Yakima River may or may not exist at a much greater depth below the present well site or elsewhere on the Olsen farm.

A new application would be necessary to probe these possibilities.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

Ι

The DOE properly denied this application for irrigation use of ground water that is in hydraulic continuity with the Yakima River. Existing withdrawals from the Yakima River are such that DOE must give full consideration to preserving the remaining flow for wildlife, fish, scenic, aesthetic and other environmental values before committing this remaining flow to irrigation. RCW 90.54.020(3)(a). Furthermore, the extent of this remaining flow may be substantially altered by proceedings recently commenced in state and federal court for the purpose of adjudicating all rights of withdrawal on the Yakima River.

A new right to withdraw ground water in continuity with the river would therefore result in an unlawful impairment of the rights of those who are presently entitled to withdraw from the river.

RCW 90.03.290 as adopted by RCW 90.44.060. See also RCW 90.44.030.

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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Any Finding of Fact which should be deemed a Conclusios of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Department of Ecology's denial of appellant's application for a permit to withdraw ground water (No. G4-24721) is hereby affirmed.

DONE at Lacey, Washington this 10th day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD

DAVE J. MOONEY, Chairman

CARIS SMITH, Member